

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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FRANK A. HUMPHREY,

ORDER

Plaintiff,

13-cv-235-wmc

DEAN HEALTH PLAN, INC.,

Subrogated Plaintiff,

v.

LOVE'S TRAVEL STOPS &  
COUNTRY STORES, INC. and  
HARDEE'S FOOD SYSTEMS, INC.,

Defendants.

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This is a civil action for monetary relief in which plaintiff Frank Humphrey, who is proceeding pro se, alleges that he received physical injuries from a fall caused by actions and omissions of the defendants. Plaintiff has paid the \$350 fee for filing this case.

The next step is for plaintiff to serve his complaint on the defendants. Under Fed. R. Civ. P. 4(m), a plaintiff has 120 days after filing a complaint in which to serve the defendants. However, that is an outside limit with few exceptions. This court requires that a plaintiff act diligently in moving his case to resolution. If plaintiff acts promptly, he should be able to serve his complaint on the defendants well before the deadline for doing so established in Rule 4.

To help plaintiff understand the procedure for serving a complaint, I am enclosing with this order a copy of a document titled "Procedure for Serving a Complaint on a Corporation in a Federal Lawsuit." In addition, I am enclosing a summons issued by the clerk's office for each defendant in accordance with the procedures set out in Option 2 of the memorandum. To the extent that plaintiff wishes to attempt service on the defendants using Option 1 of the

procedure, he may obtain the AO 398 notice of lawsuit and AO 399 waiver of summons forms from this court's website at [www.wiwd.uscourts.gov](http://www.wiwd.uscourts.gov).

ORDER

IT IS ORDERED that plaintiff serve his complaint on the defendants promptly and file proof of service of his complaint as soon as he has served the defendants. ("Proof of service" is explained in the attachments.) By June 10, 2013, plaintiff is to file proof of service of his complaint on the defendants or tell the court why he cannot do so. If he does not file the proof of service or explain why he could not serve the defendants, I will order him to explain why his case should not be dismissed for lack of prosecution.

Entered this 17<sup>th</sup> day of April, 2013.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge

PROCEDURE FOR SERVING A COMPLAINT ON  
A CORPORATION, PARTNERSHIP OR UNINCORPORATED ASSOCIATION  
IN A FEDERAL LAWSUIT

A plaintiff suing a corporation, partnership or unincorporated association in federal court may satisfy the service requirements of Fed. R. Civ. P. 4 by following one of two procedures.

Option One

Plaintiff may notify a defendant corporation, partnership, or association's "officer, managing or general agent or other agent authorized by appointment or law to receive service of process" in writing of the filing of his lawsuit and request that the defendant waive service of a summons. Fed. R. Civ. P. 4(d)(1). If plaintiff chooses this method of service, plaintiff must

- complete an original and one copy of a form titled "Notice of a Lawsuit and Request to Waive Service of a Summons" AO 398;
- address a large envelope to the officer, managing or general agent or other agent and place the following documents inside:
  - a) an original and one copy of the completed notice form;
  - b) a blank form titled "Waiver of Service of Summons" AO 399;
  - c) a copy of the complaint filed in federal court; and
  - d) a self-addressed, stamped envelope for the defendant's use in returning the waiver form;
- mail the envelope to the officer or agent by first-class mail or other reliable means;
- allow the defendant "a reasonable time to return the waiver, which shall be at least 30 days from the date on which the request is sent . . ." (Fed. R. Civ. P. 4(d)(1)(F)).
- mail a copy of the signed waiver form to the court for filing as proof of service.

Option Two

**Note well:** This procedure need not be followed unless a defendant refuses to complete and return a waiver form as described above.

Plaintiff may arrange to serve the defendant corporation, partnership or association with a summons and complaint. Fed. R. Civ. P. 4(h). If plaintiff chooses this method of service, plaintiff must

- obtain a signed and court-sealed summons from the clerk's office,
- arrange for someone over the age of 18 years of age who is not a party to the lawsuit to
  - a) deliver the signed and sealed summons and a copy of the complaint to an officer, a managing or general agent or any other agent authorized by appointment or by law to receive service of process and—if the agent is one authorized by statute and the statute so requires—by also mailing a copy of each to the defendant, Fed. R. Civ. P. 4(h)(1)(B); or
  - b) serve defendant in accordance with state law, Fed. R. Civ. P. 4(h)(1)(A); Wis. Stat. § 801.11;
- file with the court an affidavit of the person who effected service of the summons and complaint upon defendant stating the time and date the delivery was made and with whom the summons and complaint was left, or showing a receipt signed by the defendant's officer, managing or general agent or any other agent authorized by appointment or by law to receive service of process, or other evidence of delivery. Fed. R. Civ. P. 4(l).